IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4241 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANDHINAGAR DISTRICT PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4241 of 2002

MR Ketan Shah for Mr TUSHAR MEHTA for Petitioner No. 1-2

Mr. HC Patel AGP for Respondent No. 1-2

MR JM Barot for Mr HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/12/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Ketan Shah for Mr. Tushar Mehta, learned advocate for the petitioner; Mr. H.C. Patel, learned AGP for respondents No. 1-2; Mr. Jayesh Barot, learned advocate for Mr. H.S. Munshaw, learned advocate for respondent No. 3. It was submitted by Mr. Ketan Shah, learned advocate appearing for the petitioner that the controversy raised in this petition was examined by this Court (Coram : M.S.Shah,J.) in

Special Civil Application No. 1192 of 2002 with Special Civil Application No. 4995 and 4997 of 2002 decided on 25th October, 2002. He has produced copy of the judgment given by this Court on 25th October, 2002 in aforesaid petitions. Same is ordered to be taken on the record of this petition. Considering the submissions made in this petition, Rule, service of which is waived by Mr. H.C. Patel, learned AGP for the respondents NO.1-2 and Mr. Barot for Mr. Munshaw for respondent No. 3. With the consent of the learned advocates for the parties, the matter has been taken up for final hearing today itself.

It was submitted by Mr. Ketan Shah on behalf of the petitioner that this Court (Coram : M.S. Shah,J.) has examined important question about interpretation of section 162 and other provisions of the Gujarat Panchayats Act, 1993. The controversy essentially revolves round the scope of the powers of the President and the District Development Officer in the administration of the District Panchayat. According to the petitioner, the District Development Officer is none more than an ex-officio Secretary of the District Panchayat and that under section 162 of the Gujarat Panchayats Act, he is required to perform all the functions and exercise all the powers only in accordance with the orders of the President only and/or the District Panchayat and that on his own, the District Development Officer can do nothing without the prior orders of the President or the District Panchayat. Ultimately, this court has, in para 16 of the judgment in the aforesaid petitions, given summary of conclusion which is reproduced as under:

"16. Summary of Conclusions :

(i) BASIC SCHEME (Para 8)

(a) The Constitution has not conferred upon District Panchayats or any other institution of local self Government any status or role conferred upon States as provinces in a federation. While Constitutional status is conferred on Panchayats as institutions of self government, the Constitution has left it to the State Legislature to determine the extent of devolution of powers to such institutions at the appropriate level, subject to such conditions as may be specified in the State enactment. (paras 8.2 and 8.4)

(b) The State Legislature has in the Gujarat

Panchayats Act, 1993 provided for fusion of the principles of local self government with the principles of centralized planning. If not properly operated, the two principles may have the potential of conflicting with each other but the Legislature has, by carefully selected expressions, carved out distinct roles for elected heads of Panchayats and for civil servants and also provided for State Government control for specific purposes (paras 8.3 and 8.5).

(ii) The executive powers of the District Panchayat are not vested in the President of the District Panchayat, unlike the vesting of the executive powers of the village panchayat in the elected Sarpanch (paras 9.2 and 9.3).

(iii) The executive powers of the District Panchayat are vested in the District Development Officer and the exercise of these powers is subject to the orders, if any, of the President of the District Panchayat or the District Panchayat, as the case may be. But this does not mean that the District Development Officer is required to obtain prior orders of the President or the District Panchayat (para 9.7).

(iv) While the powers and functions of the President of the District Panchayat do include watching over the financial and executive administration of the panchayat and exercising administration supervision does not mean taking decisions in matters of day to day administration or in matters of appointment, transfer or other conditions of service of the panchayat employees or of officers posted by the State Government under the panchayats. The Act and the Rules therefore do not contemplate that the District Development Officer is required to obtain prior approval of the President of the District Panchayat or of the District Panchayat before taking decisions in executive matters, much less in matters which are entrusted to the District Development

Officer by the statutory rules under section 227 of the Act. (Para 11.8).

(v) However, the power of the District Development Officer to exercise such executive powers including the powers conferred by the Rules under section 227(5) of the Act is subject to the orders of the President of the District Panchayat or the District Panchayat in individual cases i.e. it is open to the District Panchayat and to the President of the District Panchayat to issue instructions to the District Development Officer to take appropriate remedial measures in matters causing concern to the elected representatives of the people, when the local people suffer any hardships or if the benefits intended to reach the people at large or the specified categories of beneficiaries do not reach them. (para 9.7 and 11.8).

(vi) The DDO is not merely a Secretary of the District Panchayat. The Act has contemplated a much larger and more important role for the DDO. In all executive matters while the DDO need not wait for a nod of approval from the President, he must pay heed to a tap on the shoulder from the President, if at all the President finds it necessary to do so in a given case. In short, the EXECUTIVE INITIATIVE remains with the DDO. (para 9.4, 11.1, 11.2, 11.6 and 11.10).

(vii) In matters of preparing development projects and the projects for the benefit of the people within the sphere of Panchayats, the elected office bearers will have a greater say while setting out the goals, but in deciding as to how those goals are to be achieved, and for deciding as to through which officers and employees the particular tasks at hand are to be carried out, it is the DDO and the other administrative officers who will have greater say, subject to the power of the President to exercise administrative supervision over the DDO

for securing implementation of the resolutions or decisions of the panchayat/commitee thereof (para 11.9).

(viii) The illustration given in para 11.9 hereinabove exemplifies the scheme of the Gujarat Panchayats Act and the roles envisaged for the President of the district panchayat and the administrative officers. In any panchayat set up, it is for the President of the District Panchayat and other elected representatives of the people to build up a smooth working relationship.No administration can effectively or properly function if the political executive and the civil servants are always at logger heads or if they donot focus their attention on their basic duties i.e. formulation of policies and programmes by the political executive and implementation of such policies and programms by the civil servants.

It is with the aforesaid perspective that the President of the district panchayat and the DDO have to play their respective roles and with due sensitivity to the role of the other. They have to cooperate with and complement each other and function as the two wheels of a chariot. The difficulty arises when the wrong question is asked as to who is in the driver's seat. the President or the DDO? The simple answer to this question which ought not to arise in the first place is the public welfare has tobe in the driver's seat. Once this truth is realized, the panchayat administration will run very smoothly and as intended by the Constitution as well as the Legislature.

(ix) The question whether the DDO is to exercise his executive powers subject to the orders of the President and the District Panchayat or subject to the general control of the District Panchayat will depend on the nature of the matters in which such powers are to be exercised. (para 13).

(x) The State Government may exercise its control over the district panchayat through the DDO within the parameters and as per the modalities as indicated in para 14 hereinabove.

(xi) Resolution No. 6 passed by the Sabarkantha District Panchayat on 21.11.2001 (Annexure-L) and the office order dated 13.12.2001 (Annexure-H) issued by the President of the Sabarkantha District Panchayat are illegal, as they are inconsistent with the principles laid down in this judgment. (para 15).

(xii) So also in case of Junagadh and Jamnagar district panchayats, orders of the Presidents of these respective district panchayats suffers from the same infirmity. (Para 15)."

In this petition also, same question and controversy has been raised by the petition. Therefore, the reasons given by this court in the aforesaid decision are also applicable to the facts of the present case. I am, therefore, not repeating the same while disposing of this petition and whatever reasons given by this court in aforesaid decision are also to be considered to be the reasons for disposing of this petition. Therefore, for the reasons recorded by this Court in decision dated 25th October, 2002 passed in Special Civil Application NO. 1192 of 2002 with Special Civil Application No. 4995 and 4997 of 2002, this petition is disposed of. Rule is discharged. There shall be no order as to costs. Ad.interim relief, if any, shall stand vacated. Office is directed to keep one copy of the said decision on the record of this petition.

Dt. 5.12.2002. (H.K.Rathod,J.)
Vyas